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FILED
YOLO SUPERIOR COURT

MAY 06 2009

By

M. P. [Signature]
Deputy

1 JEFF W. REISIG
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3 By: Garrett Hamilton/173423
4 Deputy District Attorney
5 301 Second Street
6 Woodland, California 95695
7 Telephone: (530) 666-8180
8 DA File Number: 08H03355
9 Attorney for People

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF YOLO

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

vs.

Marco Antonio Topete,

Defendant(s)

Dept. 9 Case No. 08-3355

People's Motion to Continue
May 29th Status Conference

Date: May 15th
Time: 9:00 a.m.
Dept: 9

To the Honorable Judge Timothy L. Fall, the Defendant, and
Counsel for the Defendant, Mr. Hayes Gable and Mr. Tom Purtell:

Please take notice that at the above time and place the
People will move the court to continue the currently scheduled
May 29th hearing to either June 5th in the afternoon, or June
12th in the afternoon. This motion will be based on the
following points and authorities, and declaration.

Points and Authorities

Applicable California statutes permit continuance of
preliminary hearing or trial at the request of either the
defense or the prosecution upon a showing of "good cause."

1 (Pen. Code, §§ 859b, 1050(e).) "What constitutes good cause for
2 the delay of a criminal trial is a matter that lies within the
3 discretion of the trial court." (*People v. Johnson* (1980) 26
4 Cal.3d 557, 570; see also, *People v. Strozier* (1993) 20
5 Cal.App.4th 55, 60.) A trial court's ruling on a motion for a
6 continuance is ordinarily reviewed for an abuse of discretion.
7 (*People v. Jenkins* (2000) 22 Cal.4th 900, 1037.)

8 In *Owens v. Superior Court* (1980) 28 Cal.3d 238, the
9 California Supreme Court set forth the legal criteria of good
10 cause when a continuance is sought to secure the attendance of a
11 witness: " '(1) That the movant has exercised due diligence in
12 an attempt to secure the attendance of the witness at the trial
13 by legal means; (2) that the expected testimony is material; (3)
14 that it is not merely cumulative; (4) that it can be obtained
15 within a reasonable time; and (5) that the facts to which the
16 witness will testify cannot otherwise be proven.' " (*Id.* at p.
17 251; see also, *People v. Howard* (1992) 1 Cal.4th 1132, 1171.)

18 Good cause for a continuance has been found to exist when a
19 prosecution witness was unavailable through no lack of
20 prosecutorial diligence. (*Gaines v. Municipal Court* (1980) 101
21 Cal.App.3d 556, 558-562; *Pickett v. Municipal Court* (1970) 12
22 Cal.App.3d 1158, 1162-1163.) And in *People v. Bronaugh* (1950)
23 100 Cal.App.2d 220, the court found good cause for a continuance
24 where prosecution witnesses were hospitalized and unable to
25 appear for trial. (See also, *People v. Bracamonte* (1967) 253
26 Cal.App.2d 980, 984.)

27 A properly served subpoena may, by itself, show sufficient
28 due diligence. In *Gaines v. Municipal Court*, *supra*, 101

1 Cal.App.3d 556, for example, the prosecution requested a
2 continuance beyond the statutory time for trial until a
3 subpoenaed police officer who was a material witness returned
4 from vacation. The trial court found good cause for a
5 continuance. The Court of Appeal rejected defense arguments
6 that the prosecution should have made additional efforts to
7 contact the police officer. The subpoena alone showed the
8 exercise of due diligence. (Similarly, see *People v. Alvarez*
9 (1989) 208 Cal.App.3d 567, 578.)

10 **Declaration**

11 I, Garrett Hamilton, am one of the prosecutors assigned to
12 prosecute this case. We currently have a status conference set
13 for May 29th. I make this motion because neither of the assigned
14 prosecutors, myself nor Jeff Reisig, are available for that
15 court date.

16 I have conferred with defense counsel and I understand that
17 there is no opposition to this motion. Their preference would
18 be that it be moved to either June 5th or June 12th, in the
19 afternoon. We would make either one of those dates work for us
20 in the event the court grants this motion. I am asking that
21 this motion be heard on May 15th because it is my understanding
22 that this Court is only available for these matters on Fridays
23 during the month of May. Asking for May 8th seemed to be
24 pushing it considering the number of people required to gather
25 for this case.

26 Counsel are scheduled to meet regarding the jury
27 questionnaire on May 13th.

28 / / /

1 I declare under penalty of perjury that the foregoing is
2 correct.

3 Executed on May 6, 2009, at Woodland, California.

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5 _____
6 GARRETT HAMILTON/173423
7 DEPUTY DISTRICT ATTORNEY
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SUPERIOR COURT No. 08-3355

PROOF OF SERVICE

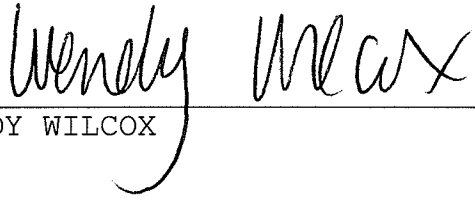
I, WENDY WILCOX, declare:

I am a citizen of the United States and a resident of the county of Yolo; I am over the age of eighteen years and not a party to the within entitled action; my business address is 301 Second Street, Woodland, California 95695.

On May 6, 2009, I served the within PEOPLE'S MOTION TO CONTINUE MAY 29TH STATUS CONFERENCE on counsel for defendant in this action, by hand delivering a true copy thereof to the Law Office of Thomas Purtell at 430 Third Street, Woodland, Ca 95695.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 6, 2009, at Woodland, California.


WENDY WILCOX

SUPERIOR COURT NO. 08-3355

PROOF OF SERVICE

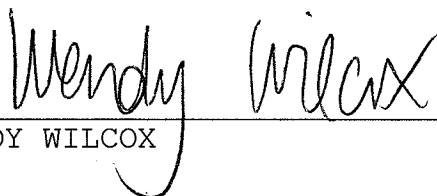
I, WENDY WILCOX, declare that I am a resident of the County of Yolo; I am over the age of eighteen years and not a party to the within entitled action; my business address is 301 Second Street, Woodland, California 95695.

On May 6, 2009, I served the within PEOPLE'S MOTION TO CONTINUE MAY 29TH STATUS CONFERENCE on counsel for defendant in this action, by placing a true copy thereof enclosed in a sealed envelope and deposited the same in the United States mail at Woodland, California, addressed to the counsel of record in this action, as follows:

HAYES GABLE
ATTORNEY AT LAW
428 J ST., STE. 354
SACRAMENTO, CA 95814

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 6, 2009, at Woodland, California



WENDY WILCOX